

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Angelo Grace, #277020,)	
)	C/A No. 9:09-1815-MBS
Petitioner,)	
)	
vs.)	
)	ORDER
George Hagan, Warden of ACI,)	
)	
Respondent.)	
_____)	

Petitioner Angelo Grace is an inmate in custody of the South Carolina Department of Corrections. He currently is housed at Allendale Correctional Institution in Fairfax, South Carolina. On July 9, 2009, Petitioner, appearing *pro se*, filed the within petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, asserting that he had been denied effective assistance of counsel with respect to charges for which he was indicted in the State of New York.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. The Magistrate Judge reviewed the petition pursuant to the provisions of 28 U.S.C. §§ 1915, 1915A, the Anti-Terrorism and Effective Death Penalty Act of 1996, and applicable precedents. The Magistrate Judge filed a Report and Recommendation on July 29, 2009. The Magistrate Judge noted that (1) petitioner has not exhausted his state remedies in the State of New York; and (2) the § 2254 petition should be filed in federal court in New York. The Magistrate Judge recommended the within petition be dismissed without prejudice and without issuance and service of process. Petitioner filed no objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court.

Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The within § 2254 petition is dismissed without prejudice and without issuance and service of process upon Respondent.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

August 21, 2009.

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.